and (2) Sarah J. Whitley, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

**FOR FURTHER INFORMATION CONTACT:** Donald J. Shaw (202) 927-5610. [TDD for hearing impaired: (202) 927-5721.]

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927-5721.]

Decided: July 6, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 93-16772 Filed 7-14-93, 8:45 am]

BILLING CODE 7035-01-P

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree Pursuant to the Clean Water Act; United States v. Union Tank Car Co.

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029 (July 17, 1973), notice is hereby given that on July 6, 1993, a proposed Consent Decree in *United States of America* v. *Union Tank Car Company*, Civil Action No. CV91-2100, was lodged with the United States District Court for the Western District of Louisiana.

In 1991, a Complaint in this action was filed by the United States of America against Union Tank Car Company under sections 301 and 309(a) of the Clean Water Act, 33 U.S C. 1311 and 1319(a), in connection with Union Tank Car's discharge of pollutants into navigable waters of the United States at its facility located near Ville Platte, Louisiana.

The proposed Consent Decree entered between the United States and Union Tank Car provides for payment of a civil penalty in the amount of $350,000 to the United States. The Consent Decree also requires the defendant to construct a wastewater treatment plant on its facility and to finance a sewer connection between its facility and the City of Ville Platte Publicly Owned Treatment Works, for disposal of the defendant's sanitary and industrial wastewater generated at its facility.

The Department of Justice will receive, for thirty (30) days from the date of publication of this notice, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Union Tank Car Company*, DOJ Ref. No. 90-5-1-1-3211.

The proposed Consent Decree may be examined at the office of the United States Attorney General, Western District of Louisiana, FNB Tower, 600 Jefferson Street, suite 1000, Lafayette, Louisiana 70501-7502, the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, 202-624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005 In requesting a copy, please enclose a check in the amount of $5.25 (25 cents per page reproduction charge) payable to the Consent Decree Library.

**Myles E. Flint,**

*Acting Assistant Attorney General, Environment and Natural Resources Division*

[FR Doc. 93-16725 Filed 7-14-93; 8:45 am]

BILLING CODE 4410-01-M

## Antitrust Division

### Pursuant to the National Cooperative Research Act of 1984—National Information Technology Center of Maryland, Inc.

Notice is hereby given that, on June 8, 1993, pursuant to Section 6(a) of the National Cooperative Research Act of 1984, 15 U.S C. 4301 *et seq.* ("the Act"), the National Information Technology Center of Maryland, Inc., ("NITC"), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following companies have become members of NITC: Ballard, Spahr, Andrews & Ingersoll, Washington, DC; Blue Cross and Blue Shield of Rhode Island, Providence, RI; Bryan Cave, Washington, DC, Dayton T. Brown, Inc., Bohemia, NY; Khafre Systems International, Inc., Silver Spring, MD; Landmark Systems Corporation, Vienna, VA; Man Made Systems, Ellicott City, MD; Martin Marietta Laboratories of the Martin Marietta Corporation, Baltimore, MD; OAO Corporation, Greenbelt, MD; The World Bank, Washington, DC, U.S. West, Inc., Advanced Technology Division, Boulder, CO.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NITC intends to file additional written notification disclosing all changes in membership.

On September 12, 1991, NITC, then known as the Maryland Information Technologies Center, Inc., filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on October 22, 1991, (56 FR 54,586).

The last notification was filed with the Department on March 10, 1993. A notice was published in the Federal Register pursuant to section 6(b) of the Act of April 22, 1993, (58 FR 21,598).

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 93-16789 Filed 7-14-93; 8:45 am]

BILLING CODE 4410-01-M

## Immigration and Naturalization Service

**[INS No. 1626-93]**

### Intent to Prepare a Draft Programmatic Environmental Impact Statement for Operations of Joint Task Force Six

**AGENCY:** The Immigration and Naturalization Service, Justice. Joint Task Force Six (JTF-6), Environmental Protection Agency.

**ACTION:** Notice of intent.

**SUMMARY:** This Notice is to announce the preparation of a Draft Programmatic Environmental Impact Statement (PEIS) for the anticipated activities and effects of Department of Defense Joint Task Force Six (JTF-6) in support of the Immigration and Naturalization Service (INS). Anticipated activities might include: reconnaissance operations, building and renovation of roads and radio towers along the United States southwest land border.

**DATES:** To be considered in the Draft PEIS, written comments and suggestions should be received not later than August 30, 1993.

**ADDRESSES:** To be included on the current mailing list or to forward written comments, please write to the following address: U.S. Army Corps of Engineers, Fort Worth District, ATTN: CESWF-PL-RE (Eric Verwers), P.O. Box 17300, Fort Worth, Texas 76102-0300

**FOR FURTHER INFORMATION CONTACT:** Eric Verwers, Environmental Resource Specialist, U.S. Army Corps of Engineers, P.O. Box 17300, 819 Taylor Street, Forth Worth, TX 76102–0300, telephone (817) 334–3246.

**SUPPLEMENTARY INFORMATION:**

**Background**

Since the late 1800's, the Immigration and Naturalization Service (INS) has been responsible for the protection of the Nation's borders from smuggling and unlawful entry of illegal aliens into the United States. This task has primarily been accomplished by the Border Patrol. Because of the increase in drug smuggling operations, the Border Patrol has been designated the primary law enforcement agency responsible for narcotics interdiction between all of the United States land ports of entry.

JTF–6 was activated November 13, 1989, at Fort Bliss, Texas by the Secretary of Defense in accordance with the President's National Drug Control Strategy. The thrust of this program is the use of Department of Defense training resources in the support of agencies responsible for the fight against illegal drugs.

The mission of JTF–6 is to plan and coordinate military operations and training along the United States southwest land border in support of counterdrug activities by Federal, State, and local law enforcement agencies, as requested through Operation Alliance and approved by the Secretary of Defense or a designated representative. The actions performed by JTF–6 personnel are quite diverse, ranging from reconnaissance operations to the building and renovation of roads and radio towers.

*Alternative*· No Action.

*Scope:* The PEIS will provide a general assessment of the expected impacts from the various types of JTF–6 activities, including possible cumulative impacts. The PEIS will develop procedures that will identify the need for documentation in accordance with the National Environmental Policy Act (NEPA) of 1969, Public Law 91–190, as amended, for other specific activities as they occur.

The INS and other Federal, state, and local law enforcement agencies will be able to develop supplemental PEISs or incorporate the PEIS to a site specific Environmental Assessment, as allowed by NEPA, for activities or locations not specifically addressed in the PEIS. Approximately 75% of the JTF–6 actions that require environmental assessment are for the INS.

*Invitation to Participate/Scoping Process* Comments received as a result of this notice will be used to assist INS in identifying impacts to the quality of the human environment. Scoping meetings will be held along the United States-Mexico Border to identify alternatives and significant issues related to the proposed action. Times and dates will be published in local newspapers and made available to current mailing lists. Individuals or organizations may participate in the scoping process by providing written comments or by attending the scoping meetings.

Dated: July 8, 1993.

**Chris Sale,**

*Acting Commissioner, Immigration and Naturalization Service.*

[FR Doc. 93–16786 Filed 7–14–93; 8:45 am]

BILLING CODE 4410–10–M

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Biological Sciences; Committee of Visitors of the Developmental Mechanisms Program; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Name*· Committee of Visitors of the Developmental Mechanisms Program; Division of Integrative Biology and Neuroscience.

*Date and Time* August 4–6, 1993; 8:30 a.m.–5 p.m. each day.

*Place.* Room 1243, NSF, 1800 G Street, NW., Washington, DC.

*Type of Meeting:* Closed.

*Contact Person:* Dr Bruce Umminger, Division Director, Division of Integrative Biology and Neuroscience, Room 321, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7905.

*Purpose of Meeting:* To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

*Agenda.* To provide oversight review of the Departmental Mechanisms Program.

*Reason for Closing:* The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: July 12, 1993.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 93–16807 Filed 7–14–93; 8:45 am]

BILLING CODE 7555–01–M

### Ocean Sciences Review Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Name:* Ocean Sciences Review Panel.

*Date and Time:* August 3–4, 1993, 9 a.m.

*Place.* St. James Hotel, 950 24th St., NW, Washington, DC 20037.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Paul Dauphin, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7837.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda* To review and evaluate Ocean Drilling proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 12, 1993.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 93–16808 Filed 7–14–93; 8:45 am]

BILLING CODE 7555–01–M

### Special Emphasis Panel in Undergraduate Education; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting

*Name* Special Emphasis Panel in Undergraduate Education.

*Date And Time* August 17, 1993; 7.30 a.m. to 9 p.m.; August 18, 1993; 8:30 a.m. to 5 p.m.; August 19, 1993; 8:30 a.m. to 5 p.m.; August 20, 1993, 8:30 a.m. to 5 p.m.

*Place* The Grand Hotel, 2350 M Street, NW., Washington, DC 20037.

*Type Of Meeting:* Closed.

*Contact Person.* Dr Terry Woodin, Program Director; National Science Foundation; 1800 G Street, NW., room 1210; Washington, DC; Telephone: (202) 357–7051

*Purpose Of Meeting.* To provide advice and recommendations concerning proposa' submitted to NSF for financial support.

*Agenda:* To review and evaluate unsolicited proposals submitted to the

Collaboratives for Excellence in Teacher Preparation program.

*Reason for Closing:* The proposals being reviewed include information of proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b. (c)(4) and (6) of the Government in the Sunshine Act.

Dated: July 12, 1993.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 93–16830 Filed 7–14–93; 8:45 am]

BILLING CODE 7555–01–M

## OFFICE OF MANAGEMENT AND BUDGET

### Circular A–25, "User Charges"

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** Revision of Circular No. A–25, "User Charges"

**SUMMARY:** Circular No. A–25 establishes guidelines for Federal agencies to assess fees for Government services and for the sale or use of Government property or resources.

**EFFECTIVE DATE:** July 15, 1993.

**FOR FURTHER INFORMATION CONTACT:** Deborah Saunders, Budget Analysis Branch, Room 6025, New Executive Office Building, Office of Management and Budget, Washington, DC 20503.

**SUPPLEMENTARY INFORMATION:** The authority for charging user fees is provided by Title V of the Independent Office Appropriations Act of 1952 (IOAA), codified at 31 U.S.C. 9701. Circular No. A–25 was last issued in 1959. This revision is consistent with the authority provided in Title V of the IOAA, as interpreted by the courts, and is not intended to expand this authority. Rather the revision seeks only to clarify Federal policy in light of thirty years of experience and to update the procedures by which agencies are to institute charges.

With the printing of this Circular in final form, the Office of Management and Budget (OMB) expects agencies to develop regulations and/or legislation, as appropriate, implementing its guidance in setting new user fees or revising existing fees.

### Changes Adopted in the Final Revision

This document makes the following changes and revisions to Circular A–25, last published in September 1959:

1. Charges should be set based on market conditions for products and services provided by business-type activities while charges for all other government services or products should be based on full-cost recovery. Section 6a(2)(b), which provides for market prices for business-type activities, is based on section 3b of the 1959 Circular, which provided for market prices for the sale or lease of federally owned resources or property. Such pricing was upheld in *Yosemite Park and Curry Co.* v. *United States,* 686 F.2d 925, 932–35 (Ct. Cl. 1982).

2. Whenever possible, charges should be set as rates rather than fixed dollar amounts in order to reflect changes in costs to the Government or changes in market prices of the property, resource or service provided.

3. As has always been the case, user charges should be assessed when a service provides special benefits to an identifiable recipient beyond those that accrue to the general public. *Compare* section 6a(1), (4) of the revised Circular *with* Section 3a(1)–(2) of the 1959 Circular. This revision to the Circular adds language—in section 6a(3)—to make explicit several principles that have been inherent in this general test. For example, the update makes clear that, when the general public also receives "incidental" benefits, the user charge should recover full cost rather than a prorated amount. Section 6a(3) is discussed further below (see Comments Received).

4. The number of specified exceptions Federal agencies can grant to the general guidelines is reduced. However, agencies may recommend additional exceptions subject to OMB approval.

5. This revision encourages agency review of specific statutory authority, in addition to the generic Independent Offices Appropriations Act, to determine whether the authority for implementation of any desired fee exists.

6. A new section is included on developing legislation when legal impediments to user charges exist. This section also includes a discussion of the conditions under which the appropriate legislative proposal would be an excise tax rather than a user charge.

8. Agencies are directed to review charges biennially and update them as necessary.

### Comments Received

Notice of the proposed revision was published for comment in the **Federal Register** on January 21, 1992 (57 FR 2293). Comments from concerned parties were due by February 15, 1992. OMB received 15 comments from Federal agencies, interest groups and private industry.

1. Several commenters objected to proposed section 6a(3). They contended that it departs from the test in the 1959 Circular for when user charges should be assessed (section 3a(1)–(2)). They also contended that it sets forth an inappropriate standard under which a user charge would be assessed for a service that not only provides a special benefit to identifiable recipients but also provides incidental benefits to the general public.

Contrary to the commenters' objections, section 6a(3) does not depart from the traditional test in the Circular for when user charges should be assessed, and it does not establish an inappropriate standard for assessing user charges. Rather, as explained below, section 6a(3) states explicitly principles that have been inherent in the Circular, been applied by agencies over the years in assessing user charges, and been upheld by the courts when those user charges were challenged. Accordingly, we have adopted section 6a(3) in this revision to the Circular.

Foremost among the principles stated in section 6a(3) is that agencies shall assess a user charge for services that provide special benefits to an identifiable recipient even when those services also provide incidental benefits to the general public. This principle proceeds from the general test for when user charges should be assessed, which had been in section 3a(1)–(2) of the 1959 Circular and is now in section 6a(1), (4). Under this test, a charge will be assessed when a service provides special benefits to an identifiable recipient beyond those that accrue to the general public, but will not be assessed when the identification of the specific beneficiary is obscure and the service can be considered primarily as benefitting broadly the general public. This test was upheld by the Supreme Court in *FPC* v. *New England Power Co.,* 415 U.S. 345, 349–51 (1974) (citing Circular No. A–25).

Applying this test, agencies over the years have assessed numerous user charges for services that not only provide special benefits to identifiable recipients, but also provide incidental benefits to the public. This is evident from the number of court cases in which a party challenged a user charge and in so doing advanced the argument offered by the commenters, namely, that—as one court characterized the challengers' argument—"the *public* interest in these activities is so strong that it is unfair to assess any of their cost against any private party." *Electronic Industries Ass'n* v. *FCC,* 554 F.2d 1109, 1113 (D.C. Cir. 1976). As the courts have recognized, if this argument were valid,

it "would mean that *no* federal agency could assess any fees, since all public agencies are constituted in the public interest." *Mississippi Power & Light Co.* v. *NRC*, 601 F.2d 223, 229 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980).

Since such a result would be plainly inconsistent with Congress' authorization of user charges in the IOAA and other statutes, the courts have consistently rejected the argument. See *Ayuda, Inc.* v. *Attorney General*, 848 F.2d 1297, 1300 (D.C. Cir. 1988) ("Such fees may be assessed even when the service redounds in part to the benefit of the public as a whole."); *Phillips Petroleum Co.* v. *FERC*, 786 F.2d 370, 376 (10th Cir.), *cert. denied*, 479 U.S. 823 (1986) ("where an agency performs a service from which a regulated entity derives a 'special benefit,' it may charge a fee, even though the public also benefits"); *Mississippi Power & Light Co.* v. *NRC*, 601 F.2d at 227–29; *Electronic Industries Ass'n* v. *FCC*, 554 F.2d at 1114 n.12, 1115–16; *National Cable Television Ass'n, Inc.* v. *FCC*, 554 F.2d 1094, 1103 (D.C. Cir. 1976).

Section 6a(3) also states the related principle that, for a service that provides incidental benefits to the public, the agency should not pro-rate the user charge by allocating any part of it to the public, but instead should charge those identifiable recipients who receive the special benefit the full cost of rendering the service. This principle follows from the direction in section 3a(1) of the 1959 Circular that "a charge should be imposed to recover the full cost to the Federal Government of rendering that service."

This principle of full-cost recovery is essential to achieving the aim of user charge statutes such as the IOAA. As one court explained, requiring an allocation of costs "would saddle agencies with the impossible task of sorting out public from private benefits, with the likely result that most agency fees would be reduced to mere tokens." *Mississippi Power & Light Co.* v. *NRC*, 601 F.2d at 230. Accordingly, the courts have upheld user charges implementing the Circular's principle of full-cost recovery. *See Central & Southern Motor Freight Tariff Ass'n* v. *United States*, 777 F.2d 722, 732 (D.C. Cir. 1985) ("If the asserted public benefits are the necessary consequence of the agency's provision of the relevant private benefits, then the public benefits are not independent, and the agency would therefore not need to allocate any costs to the public."); *Mississippi Power & Light Co.* v. *NRC*, 601 F.2d at 230 ("the NRC may recover the *full cost* of providing a service to an identifiable beneficiary, regardless of the incidental public benefits flowing from the provision of that service"); *Electronics Industries Ass'n* v. *FCC*, 554 F.2d at 1115 ("the Commission is not prohibited from charging an applicant or grantee the full cost of services rendered to an applicant which also result in some incidental public benefits"). In cases where, under section 6a(2)(b), the charge would be the market price, rather than the cost of rendering the service, the full market price is charged.

Finally, section 6a(3) states a third principle that has been inherent in the Circular and has been upheld by the courts. If a service provides the public a benefit that is *independent from*—rather than *incidental to*—the special benefit that the service provides an identifiable recipient, then the cost to the Federal Government of providing that independent public benefit is not included in the user charge. *See Central & Southern Motor Freight Tariff Ass'n* v. *United States*, 777 F.2d at 729–30; *Mississippi Power & Light Co.* v. *NRC*, 601 F.2d at 230; *Electronics Industries Ass'n* v. *FCC*, 554 F.2d at 1115.

In addition to objecting to section 6a(3) on general grounds, commenters also objected to the specific examples found in that provision of activities for which a user charge would be appropriate. Those examples were of processing a new drug application and inspecting farm products (the latter example was also used in the proposed section 6a(1)(b)). The commenters contended that these activities, in particular, should not be subject to user charges. To support their position, the commenters offered factual and legal arguments that were specifically addressed to each of those activities.

As the preamble to the proposal noted, examples were included in the Circular to clarify its intent and scope. 57 FR at 2294. However, given the comments we have received concerning those two particular examples, and since the agencies themselves are in the best position to apply the Circular's principles to the specific factual situations presented by their various activities, we have omitted those two examples from the revision of the Circular. We emphasize, however, that this omission does not express any view, one way or the other, as to whether a user charge should be assessed for those activities. Rather, as will be the case with any activity not specifically mentioned as an example in the Circular, the pertinent agencies will assess these activities on an individual basis and, in so doing, will apply the Circular's general principles and be guided by the extensive case law concerning user charges that has developed since the Circular was issued in 1959. We have also decided not to include in the text of the Circular other examples to illustrate the principles in section 6a(3). Instead, agencies seeking examples of how those principles are applied in practice can look to the court cases discussed above, in which the courts applied those principles to specific user charges. In addition, when questions arise as to the appropriateness of assessing a user charge for a particular activity, agencies may consult with OMB.

2. All the Federal agencies submitted comments suggesting the Circular conform with the Chief Financial Officers Act of 1990 (Pub. L. 101–576), which requires an agency CFO to biennially review fees, royalties, rents and other charges. The circular has been so revised to require biennial review of user charges by the CFO.

3. More detailed direction in estimating fringe benefit costs was requested. The Circular now directs each agency to estimate retirement costs as specified in Circular No. A–11 (Preparation and Submission of Budget Estimates).

4. The stated timing of collections for user charges in legislative proposals was questioned. The belief is that requiring collection of fees prior to or simultaneously with the provision of service is inconsistent with standard business practice. This requirement is included to conform to basic appropriations law which precludes fee collections other than prior to or simultaneously with provision of service unless appropriations and authority are provided in advance to allow reimbursable services.

5. It was suggested that agency heads or their designee be permitted to make user charge exceptions for activities with estimated annual collections under $10 million. Further, it was suggested, for such exceptions agency heads or their designee should be permitted to extend the exception. OMB will continue to review all user charge exceptions and extensions. OMB has reviewed exceptions and extensions, and has the mechanisms in place to continue to do so.

A suggestion was also made that the exception extension period be lengthened from four years to six years, to allow more time where legislative action is required. OMB believes the current four year extension period is sufficiently long to provide for any legislative action.

6. Certain comments contained specific questions regarding

interpretation of the Circular. The question was raised whether OMB intends the provisions of Circular A–25 be applied to "special benefits" provided to other Federal establishments. Circular A–25 is intended to apply to the provision of Government goods and services to the public, not other Federal establishments.

One commenter asked if, in the section where charging user fees based on market price is discussed, the example of leasing space in federally owned buildings was intended to restrict possible interpretations of services rendered. Market price should be charged in all circumstances in which the Government is not acting in its capacity as sovereign. The example used is just that, an example of a situation in which the Government, not acting in its capacity as sovereign, is providing a service under business-type conditions.

Again regarding market pricing, the question was asked whether a user fee should be assessed if the market price is less than full cost. The Circular states when the Government provides goods or services under business-type conditions, market price should be charged. When the Government, acting in its capacity as sovereign, provides a good or service, the user charge should be sufficient to cover the full cost to the Federal Government to provide the good or service. Exceptions may be granted for agencies to charge fees below market price or full cost. These exceptions will be granted by OMB on a case by case basis.

To the Heads of Executive Departments and Establishments

Subject. User Charges

1. *Purpose.* The Circular establishes Federal policy regarding fees assessed for Government services and for sale or use of Government goods or resources. It provides information on the scope and types of activities subject to user charges and on the basis upon which user charges are to be set. Finally, it provides guidance for agency implementation of charges and the disposition of collections.

2. *Rescission.* This rescinds Office of Management and Budget Circular No. A–25, dated September 23, 1959, and Transmittal Memoranda 1 and 2.

3 *Authority.* Title V of the Independent Offices Appropriations Act of 1952 (31 U.S.C. 9701); 31 U.S.C. 1111; and Executive Orders No. 8248 and No. 11,541

4. *Coverage.*

a. The provisions of this Circular cover all Federal activities that convey special benefits to recipients beyond those accruing to the general public. The Circular does not apply to the activities of the legislative and judicial branches of Government, or to mixed-ownership Government corporations, as defined in 31 U.S.C. 9701.

b. The provisions of the Circular shall be applied by agencies in their assessment of user charges under the IOAA. In addition, this Circular provides guidance to agencies regarding their assessment of user charges under other statutes. This guidance is intended to be applied only to the extent permitted by law. Thus, where a statute prohibits the assessment of a user charge on a service or addresses an aspect of the user charge (e.g., who pays the charge; how much is the charge; where collections are deposited), the statute shall take precedence over the Circular. In such cases (e.g., sale or disposal under Federal surplus property statutes; or fringe benefits for military personnel and civilian employees), the guidance provided by the Circular would apply to the extent that it is not inconsistent with the statute. The same analysis would apply with regard to executive orders that address user charges.

c. In any case where an Office of Management and Budget circular provides guidance concerning a specific user charge area, the guidance of that circular shall be deemed to meet the requirements of this Circular. Examples of such guidance include the following: OMB Circular No. A–45, concerning charges for rental quarters; OMB Circular No. A–130, concerning management of Federal information resources; and OMB Circular No. A–97, concerning provision of specialized technical services to State and Local governments.

5 *Objectives.* It is the objective of the United States Government to:

a. Ensure that each service, sale, or use of Government goods or resources provided by an agency to specific recipients be self-sustaining;

b. Promote efficient allocation of the Nation's resources by establishing charges for special benefits provided to the recipient that are at least as great as costs to the Government of providing the special benefits, and

c. Allow the private sector to compete with the Government without disadvantage in supplying comparable services, resources, or goods where appropriate.

6. *General policy.* A user charge, as described below, will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public. When the imposition of user charges is prohibited or restricted by existing law, agencies will review activities periodically and recommend legislative changes when appropriate. section 7 gives guidance on drafting legislation to implement user charges.

a. *Special benefits.*

(1) Determining when special benefits exist. When a service (or privilege) provides special benefits to an identifiable recipient beyond those that accrue to the general public, a charge will be imposed (to recover the full cost to the Federal Government for providing the special benefit, or the market price). For example, a special benefit will be considered to accrue and a user charge will be imposed when a Government service:

(a) Enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those that accrue to the general public (e.g., receiving a patent, insurance, or guarantee provision, or a license to carry on a specific activity or business or various kinds of public land use); or

(b) Provides business stability or contributes to public confidence in the business activity of the beneficiary (e.g., insuring deposits in commercial banks); or

(c) Is performed at the request of or for the convenience of the recipient, and is beyond the services regularly received by other members of the same industry or group or by the general public (e.g., receiving a passport, visa, airman's certificate, or a Custom's inspection after regular duty hours).

(2) Determining the amount of user charges to assess.

(a) Except as provided in section 6c, user charges will be sufficient to recover the full cost to the Federal Government (as defined in section 6d) of providing the service, resource, or good when the Government is acting in its capacity as sovereign

(b) Except as provided in section 6c, user charges will be based on market prices (as defined in section 6d) when the Government, not acting in its capacity as sovereign, is leasing or selling goods or resources, or is providing a service (e.g., leasing space in federally owned buildings). Under these business-type conditions, user charges need not be limited to the recovery of full cost and may yield net revenues.

(c) User charges will be collected in advance of, or simultaneously with, the rendering of services unless appropriations and authority are

provided in advance to allow reimbursable services.

(d) Whenever possible, charges should be set as rates rather than fixed dollar amounts in order to adjust for changes in costs to the Government or changes in market prices of the good, resource, or service provided (as defined in section 6d).

(3) In cases where the Government is supplying services, goods, or resources that provide a special benefit to an identifiable recipient and that also provide a benefit to the general public, charges should be set in accordance with paragraph (2) of section 6a. Therefore, when the public obtains benefits as a necessary consequence of an agency's provision of special benefits to an identifiable recipient (i.e., the public benefits are not independent of, but merely incidental to, the special benefits), an agency need not allocate any costs to the public and should seek to recover from the identifiable recipient either the full cost to the Federal Government of providing the special benefit or the market price, whichever applies.

(4) No charge should be made for a service when the identification of the specific beneficiary is obscure, and the service can be considered primarily as benefiting broadly the general public.

b. *Charges to the direct recipient.* Charges will be made to the direct recipient of the special benefit even though all or part of the special benefits may then be passed to others.

c. *Exceptions.*

(1) Agency heads or their designee may make exceptions to the general policy if the provision of a free service is an appropriate courtesy to a foreign government or international organization; or comparable fees are set on a reciprocal basis with a foreign country.

(2) Agency heads or their designee may recommend to the Office of Management and Budget that exceptions to the general policy be made when:

(a) The cost of collecting the fees would represent an unduly large part of the fee for the activity; or

(b) Any other condition exists that, in the opinion of the agency head or his designee, justifies an exception.

(3) All exceptions shall be for a period of no more than four years unless renewed by the agency heads or their designee for exceptions granted under section 6c(1) or the Office of Management and Budget for exceptions granted under section 6c(2) after a review to determine whether conditions warrant their continuation.

(4) Requests for exceptions and extensions under paragraphs (2) and (3) of section 6c shall be submitted to the Director of the Office of Management and Budget.

d. *Determining full cost and market price.*

(1) "Full cost" includes all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service. These costs include, but are not limited to, an appropriate share of:

(a) Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement. Retirement costs should include all (funded or unfunded) accrued costs not covered by employee contributions as specified in Circular No. A–11.

(b) Physical overhead, consulting, and other indirect costs including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment. If imputed rental costs are applied, they should include:

(i) Depreciation of structures and equipment, based on official Internal Revenue Service depreciation guidelines unless better estimates are available; and

(ii) An annual rate of return (equal to the average long-term Treasury bond rate) on land, structures, equipment and other capital resources used.

(c) The management and supervisory costs.

(d) The costs of enforcement, collection, research, establishment of standards, and regulation, including any required environmental impact statements.

(e) Full cost shall be determined or estimated from the best available records of the agency, and new cost accounting systems need not be established solely for this purpose.

(2) "Market price" means the price for a good, resource, or service that is based on competition in open markets, and creates neither a shortage nor a surplus of the good, resource, or service.

(a) When a substantial competitive demand exists for a good, resource, or service, its market price will be determined using commercial practices, for example:

(i) By competitive bidding; or

(ii) By reference to prevailing prices in competitive markets for goods, resources, or services that are the same or similar to those provided by the Government (e.g., campsites or grazing lands in the general vicinity of private ones) with adjustments as appropriate that reflect demand, level of service, and quality of the good or service.

(b) In the absence of substantial competitive demand, market price will be determined by taking into account the prevailing prices for goods, resources, or services that are the same or substantially similar to those provided by the Government, and then adjusting the supply made available and/or price of the good, resource, or service so that there will be neither a shortage nor a surplus (e.g., campsites in remote areas).

7. *Implementation.*

a. The general policy is that user charges will be instituted through the promulgation of regulations.

b. When there are statutory prohibitions or limitations on charges, legislation to permit charges to be established should be proposed. In general, legislation should seek to remove restraints on user charges and permit their establishment under the guidelines provided in this Circular. When passage of this general authority seems unlikely, more restrictive authority should be sought. The level of charges proposed should be based on the guidelines in section 6. When necessary, legislation should:

(1) Define in general terms the services for which charges will be assessed and the pricing mechanism that will be used;

(2) Specify fees will be collected in advance of, or simultaneously with, the provision of service unless appropriations and authority are provided in advance to allow reimbursable services;

(3) Specify where collections will be credited (see section 9). Legislative proposals should not normally specify precise charges. The user charge schedule should be set by regulation. This will allow administrative updating of fees to reflect changing costs and market values. Where it is not considered feasible to collect charges at a level specified in section 6, charges should be set as close to that level as is practical.

c. Excise taxes are another means of charging specific beneficiaries for the Government services they receive. New user charges should not be proposed in cases where an excise tax currently finances the Government services that benefit specific individuals. Agencies may consider proposing a new excise tax when it would be significantly cheaper to administer than fees, and the burden of the excise tax would rest almost entirely on the user population (e.g., gasoline tax to finance highway construction). Excise taxes cannot be imposed through administrative action but rather require legislation. Legislation should meet the same criteria as in section 7b; however, it is necessary to state explicitly the rate of

the tax. Agency review of these taxes must be performed periodically and new legislation should be proposed, as appropriate, to update the tax based on changes in cost. Any excise tax proposals must be approved by the Assistant Secretary for Tax Policy at the Department of the Treasury.

d. When developing options to institute user charges administratively, agencies should review all sources of statutory authority in addition to the Independent Offices Appropriations Act that may authorize implementation of such charges.

e. In proposing new charges or modifications to existing ones, managers of other programs that provide special benefits to the same or similar user populations should be consulted. Joint legislative proposals should be made, and joint collection efforts designed to ease the burden on the users should be used, whenever possible.

f. Every effort should be made to keep the costs of collection to a minimum. The principles embodied in Circular No. A–76 (Performance of Commercial Activities) should be considered in designing the collection effort.

g. Legislative proposals must be submitted to the Office of Management and Budget in accordance with the requirements of Circular No. A–19. To ensure the proper placement of user fee initiatives in the budget account structure, agencies are encouraged to discuss proposals with OMB at an early stage of development.

8. *Agency responsibility.* Agencies are responsible for the initiation and adoption of user charge schedules consistent with the policies in this Circular. Each agency will:

a. Identify the services and activities covered by this Circular;

b. Determine the extent of the special benefits provided;

c. Apply the principles specified in section 6 in determining full cost or market price, as appropriate;

d. Apply the guidance in section 7 either to institute charges through the promulgation of regulations or submit legislation as appropriate;

e. Review the user charges for agency programs biennially, to include: (1) Assurance that existing charges are adjusted to reflect unanticipated changes in costs or market values; and (2) a review of all other agency programs to determine whether fees should be assessed for Government services or the user of Government goods or services. Agencies should discuss the results of the biennial review of user fees and any resultant proposals in the Chief Financial Officers Annual Report required by the Chief Financial Officers Act of 1990;

f. Ensure that the requirements of OMB Circular No. A–123 (Internal Control Systems) and appropriate audit standards are applied to collection;

g. Maintain readily accessible records of:

(1) The services or activities covered by this Circular;

(2) The extent of special benefits provided;

(3) The exceptions to the general policy of this Circular;

(4) The information used to establish charges and the specific method(s) used to determine them; and

(5) The collections from each user charge imposed.

(6) Maintain adequate records of the information used to establish charges and provide them upon request to OMB for the evaluation of the schedules and provide data on user charges to OMB in accordance with the requirements in Circular No. A–11.

9. *Disposition of collections.* a. Unless a statute provides otherwise, user charge collections will be credited to the general fund of the Treasury as miscellaneous receipts, as required by 31 U.S.C. 3302.

b. Legislative proposals to permit the collections to be retained by the agency may be appropriate in certain circumstances. Proposals should meet the guidelines in section 7b.

Proposals that allow agency retention of collections may be appropriate when a fee is levied in order to finance a service that is intended to be provided on a substantially self-sustaining basis and thus is dependent upon adequate collections.

(1) Generally, the authority to use fees credited to an agency's appropriations should be subject to limits set in annual appropriations language. However, it may be appropriate to request exemption from annual appropriations control, if provision of the service is dependent on demand that is irregular or unpredictable (e.g., a fee to reimburse an agency for the cost of overtime pay of inspectors for services performed after regular duty hours).

(2) As a normal rule, legislative proposals that permit fees to be credited to accounts should also be consistent with the full-cost recovery guidelines contained in this Circular. Any fees in excess of full-cost recovery and any increase in fees to recover the portion of retirement costs which recoups all (funded or unfunded) accrual costs not covered by employee contributions should be credited to the general fund of the Treasury as miscellaneous receipts.

10. *New activities.* Whenever agencies prepare legislative proposals for new or expanded Federal activities that would provide special benefits, the policies and criteria set forth in this Circular will apply.

11. *Inquiries.* For information concerning this Circular, consult the Office of Management and Budget examiner responsible for the agency's budget estimates.

**Leon E. Panetta,**

*Director, Office of Management and Budget.*

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## PENSION BENEFIT GUARANTY CORPORATION

### Use of Negotiated Rulemaking

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Request for comments.

**SUMMARY:** The Pension Benefit Guaranty Corporation ("PBGC") is considering developing a policy on the use of negotiated rulemaking. The Negotiated Rulemaking Act establishes a framework for the conduct of negotiated rulemaking, and it encourages Federal agencies to use negotiated rulemaking to enhance their informal rulemaking process. The PBGC is seeking comments at this time in order to involve the affected public at the outset of policy development.

**DATES:** Comments must be submitted on or before September 13, 1993.

**ADDRESSES:** Send comments to Ellan H. Spring, Dispute Resolution Specialist, Pension Benefit Guaranty Corporation, 2020 K Street NW., Code 35300, Washington, DC 20006–1860. Comments will be available for inspection at the PBGC's Communications and Public Affairs Department, suite 7100, at the above address between 9 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Ellan H. Spring, Dispute Resolution Specialist, Pension Benefit Guaranty Corporation, at the address given above, or telephone 202–778–8817 (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** The Pension Benefit Guaranty Corporation ("PBGC") is considering developing a policy on negotiated rulemaking, the framework for which is established in the Negotiated Rulemaking Act (5 U.S.C. 561–570). "Negotiated rulemaking" means rulemaking through the use of a negotiated rulemaking committee (5 U.S.C. 562(6)). In negotiated